

REMARKS

The absence of a recitation claiming the benefit of the parent provisional application has been cured by the amendment to the specification wherein it is recited that this application claims the benefit of provisional U.S. patent application, Serial No. 60/407,086.

Of the sixteen claims submitted for examination, six of them, Claims 11-16, have been withdrawn from consideration. Although the outstanding Official Action does not state the finality of that restriction requirement, applicants aver that the restriction requirement has constructively been made final insofar as applicants' traverse has been rejected on grounds included in the outstanding Official Action. Applicants reserve their right to file a divisional application directed to Claims 11-16, the claims finally withdrawn from consideration from this application, during the pendency of the present application.

All the claims examined on the merits in this application, Claims 1-10, have been objected to and/or rejected. Applicants have amended their claims and respectfully submit that all the claims currently in this application are patentable over the rejection of record.

The sole objection imposed in the Official Action is directed to Claim 2. Claim 2 is objected to, under 37 C.F.R. § 1.75, as being substantially duplicative of Claim 1. This objection has been made moot by the cancellation of that claim. Claim 3, which depends from Claim 2, has been amended to depend from Claim 1.

All the claims examined on the merits, Claims 1-10, stand rejected on substantive grounds, under 35 U.S.C. § 103(a), as being obvious over U.S. Patent No. 6,696,464 to McClure et al.

It is unnecessary to review the grounds advanced in the outstanding Official Action in support of this rejection insofar as McClure et al. is applied as a reference under 35 U.S.C. §102(e) insofar as the issue date of McClure et al., February 24, 2004, is subsequent in time to the filing date of the present application, August 27, 2003. It is furthermore noted that the McClure et al. patent is assigned, on its face, to Pfizer, Inc. The present assignee, as evidenced by the publication of present application as United States Patent Application Publication No. US 2004/0157877 A1, which states on its face that the assignee is Pfizer, Inc., is thus identical to the assignee of this applied patent.

In view of the fact that the applied United States patent is assigned to the same assignee as the present application and in further view of the fact that that patent is applied under 35 U.S.C. §102(e), the present ground of rejection falls under 35 U.S.C. §103(c).

Applicants have filed a terminal disclaimer disclaiming the term of any patent issuing from the present application beyond the termination date of the aforementioned McClure et al. patent. As such, the rejection of Claims 1-10, under 35 U.S.C. §103(a), as being obvious over McClure et al., is overcome.

The second substantive ground of rejection is a provisional rejection, imposed under 35 U.S.C. §101, as claiming the same invention as Claim 13 of co-pending U.S. patent application, Serial No. 10/649,236.

Applicants have canceled Claim 10.

The third substantive ground of rejection is another rejection of Claims 1-10. Claims 1-10 stand rejected, under the judicially created doctrine of obviousness-double patenting, over Claims 1, 5, 15, 49 and 50 of McClure et al.

This ground of rejection is overcome by the above discussed submission herewith of a terminal disclaimer disclaiming the term of any patent that issues in the present application that extends beyond the termination date of the aforementioned McClure et al. patent.

The fourth substantive ground of rejection is a provisional rejection of Claims 1-9, under the judicially created doctrine of obviousness-typed double patenting, over Claims 1-3 and 6-11 of copending U.S. patent application, Serial No. 10/649,236.

Applicants submit herewith a provisional terminal disclaimer disclaiming the term of any patent that issues from the present application that extends beyond the termination date of any patent that issues from U.S. patent application, Serial No. 10/649,236.

The fifth substantive ground of rejection is a provisional rejection of Claims 1-10, which stand rejected, under the judicially created doctrine of obviousness-type double patenting, over Claims 1-9 of copending U.S. patent application, Serial No. 10/649,265 in view of McClure et al.

It is unnecessary to review the grounds imposed in the outstanding Official Action. Suffice to say, applicants have filed a terminal disclaimer disclaiming the term of any patent that extends beyond the termination date of McClure et al. As such, McClure et al. is removed as a reference. Therefore, this ground of rejection is overcome.

The sixth ground of rejection is a provision rejection of Claims 1-10, under the judicially created doctrine of obviousness-type double patenting, over Claims 1-9 of copending U.S. patent application, Serial No. 10/649,227, taken in view of McClure et al.

It is unnecessary to consider the grounds imposed in this provisional rejection. The terminal disclaimer, disclaiming the term of any patent issuing from the present application that extends beyond the term of the McClure et al. patent, removes McClure et al. as a reference. As such, this ground of rejection is overcome.

The seventh substantive ground of rejection is again a provisional rejection predicated upon the disclosure of Claims 1-10 in copending U.S. patent application, Serial No. 10/649,255 taken in view of McClure et al.

As in the case of the fifth and sixth substantive grounds of rejection, this provisional ground of rejection has been made moot by the filing of the terminal disclaimer disclaiming the term of any patent that issues from the present application that extends beyond the termination date of McClure et al. The removal of McClure et al. as a reference overcomes this ground of rejection.

The above amendment and remarks, when taken with the enclosed terminal disclaimers, establish the patentable nature of all the claims currently in this application. Notice of Allowance and passage to issue of these claims, Claims 1 and 3-9, is therefore respectfully solicited.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Marvin Bressler", with a long horizontal flourish extending to the right.

Marvin Bressler
Registration No. 25,132
Attorney for Applicants

Scully, Scott, Murphy & Presser
400 Garden City Plaza, Suite 300
Garden City, New York 11530
516-742-4343

MB:gc